

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4614 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Dr. Y. SRIVASTAVA

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR JC SHETH for Petitioner

MR NIGAM SHUKLA for Respondent No.1 & 2

None present for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, working as a tutor against the post of Assistant Professor, filed this Special Civil Application before this Court challenging therein the order annexure 'G', under which his services were terminated with effect from 30th September 1984. The challenge has also been made by the petitioner to the order of the respondent

dated 21st July 1977, annexure 'A'. Under this order, the petitioner has been appointed against the post of Assistant Professor in the subject of Biochemistry.

2. The challenge to the order dated 21st July 1977 is difficult to understand. The learned counsel for the petitioner is unable to satisfy this Court how this order is against the provisions of Articles 14 & 16 of the Constitution of India. Reading of order annexure 'A' gives out that the appointment has been made as tutor against the post of Assistant Professor and the claim of the petitioner for Assistant Professor is difficult to appreciate what to say to accept the same.

3. So far the challenge to the order dated 31st August 1984 under which the services of the petitioner were brought to an end from 30th September 1984 is concerned, it is suffice to say that this order was stayed by this Court on 28th September 1984. The prayer of interim relief has been made in Para 18(c) of the petition, which reads as under:

"That during the pendency and disposal of this petition, the opponents and their agents may be restrained from executing and implementing the order annexed as Annexure 'G' terminating the services of the petitioner."

This prayer, as stated earlier, has been accepted and it is not in dispute between the parties that in pursuance of the interim relief granted by this Court, the petitioner is till date continuing in service of respondents.

4. The termination has been made by respondents, of the services of the petitioner, on the ground that the Medical Council of India, under its letter dated 9.11.84 intimated the Government that on considering the eligibility qualifications for appointment of Assistant Professor of Biochemistry of the petitioner, the Council has decided that the petitioner could not be recommended for appointment as Assistant Professor in Biochemistry in the State Medical College in Gujarat. The termination of services of the petitioner has been made after receipt of the aforesaid recommendations of the Medical Council of India. A copy of the decision of the Medical Council of India, reference of which has been made by the respondent in the reply, has not been filed on record. The petitioner filed a letter of Medical Council of India dated 3rd December 1976. This letter has been sent to the Director, Medical Education & Research, Gujarat,

under the caption. "Teachers Eligibility Qualifications - Appointment of Dr. Y. Srivastava, as tutor in Biochemistry". Under the said letter, the petitioner was recommended to be eligible to be appointed as a tutor in Biochemistry in the State Medical College, Gujarat. Under the said letter, it has also been recommended that for further promotion, the petitioner must obtain Ph.D. (Medical) in the subject of Biochemistry.

5. From the annexure 'A', it is clear that the petitioner has been appointed as a tutor and not as an Assistant Professor. It is true, as contended by the learned counsel for the respondent that this appointment was against the post of Assistant Professor, but the appointment was on the post of tutor and the services of the petitioner have been terminated as tutor. So, if the petitioner was not possessing the qualifications for the appointment on the post of Assistant Professor, I fail to see any justification to terminate the services of the petitioner as a tutor for which he was recommended to be eligible by the Medical Council of India. It is a different matter that after the recommendations of the Medical Council of India, the petitioner should not be allowed to discharge duties of Assistant Professor, but that will not bring his appointment as a tutor to an end. The action of the respondents to terminate the services of the petitioner from the post of tutor on the ground that he does not possess the qualifications for appointment on the post of Assistant Professor cannot be allowed to stand. Moreover, the petitioner is, for all these years, continuing to work under the interim order of this Court and this is yet another ground which goes in favour of the petitioner.

6. In the result, this Special Civil Application stands disposed of with direction to the respondents that the order of termination of services of the petitioner which has been stayed by this Court may not be given effect to. However, it is made clear that in case the petitioner does not acquire the qualifications for the post of Assistant Professor, as recommended by the Medical Council of India, the respondents shall be at liberty not to take from him the work of Assistant Professor. It is further made clear that this order of the Court will not confer any status of regular appointment or permanent appointment upon the petitioner. The appointment of the petitioner made initially on the post of tutor against the post of Assistant Professor will remain of same status in which it was made. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)